# APPROVED MINUTES\* SUNNYVALE CITY COUNCIL TUESDAY, NOVEMBER 17, 2009

#### 7 P.M. COUNCIL MEETING

CALL TO ORDER

**SALUTE TO THE FLAG** 

ROLL CALL

**PRESENT:** Mayor Anthony Spitaleri

Vice Mayor Christopher Moylan Councilmember John Howe Councilmember Ron Swegles Councilmember Melinda Hamilton Councilmember David Whittum Councilmember Dean Chu

ABSENT: None

**STAFF PRESENT:** City Manager Gary Luebbers

Assistant City Manager Robert Walker

City Attorney David Kahn

Director of Community Development Hanson Hom

Director of Public Works Marvin Rose City Clerk Kathleen Franco Simmons

#### **PUBLIC ANNOUNCEMENTS**

Mayor Spitaleri proclaimed National Family Week within the City of Sunnyvale.

Dan Hugo provided an announcement regarding a media outlet titled Radio Sunnyvale.com.

Fred Fowler, President of Lakewood Village Neighborhood Association, announced the upcoming Lakewood Village Holiday Parade.

#### **CONSENT CALENDAR**

Jim Griffith removed Item 1.E. from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded approval of the Consent Calendar, with the exception of Item 1.E.

Councilmember Whittum disclosed his home is within 500 feet of Item 1.H. but a financial conflict does not exist between his property and this item.

**VOTE: 7-0** 

- 1.A. Approval of Council Meeting Minutes of October 20, 2009
- 1.B. Approval of Council Meeting Minutes of October 27, 2009
- 1.C. Approval of Information/Action Items Council Directions to Staff

#### Fiscal Items

1.D. RTC 09-283 List of Claims and Bills Approved for Payment by the City Manager – List Nos. 477, 478, & 479

Staff Recommendation: Review the attached lists of bills.

#### **Contracts**

1.E. RTC 09-285 Award of Contract for Seven Service Trucks (F0910-33)

Public comment opened at 7:08 p.m.

Jim Griffith stated he pulled this item because the number three bidder on this contract was a dealer in Sunnyvale; however, it was not considered because it was two percent above the lowest bid. Griffith explained that City ordinances do not allow consideration of a bid unless it is within one percent or less; therefore, Council has no option but to accept the lowest bid. Griffith explained he is concerned at giving City business to a dealership out of the area and requested that the ordinance be amended to allow Council some discretion to consider other circumstances besides just the one percent. Griffith cited the poor economy and the fact that local dealerships are shutting down, which are concerns that might be worth the additional cost to help local businesses stay in business. Griffith requested that during a future meeting, Council reconsider the ordinance governing the one percent allowance in order to allow Council more discretion at times when there may be reasons to consider a Sunnyvale bid over the lowest bidder.

Public comment closed at 7:10 p.m.

Councilmember Swegles verified with City Manager Gary Luebbers that staff will be making a presentation to Council regarding the bid and purchasing process at the first of the year

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MOTION: Councilmember Hamilton moved and Councilmember Swegles seconded to approve award a contract in the amount of \$124,103 to Serramonte Ford for seven service trucks.

**VOTE: 7-0** 

1.F. RTC 09-284 Award of Contract for Liquid Chlorine and Liquid Sulfur Dioxide (F0909-28)

<u>Staff Recommendation</u>: Award a one-year contract in an amount not to exceed \$202,748, to Sierra Chemical Company of Sparks, Nevada.

#### **Contracts: Sunnyvale Works!**

1.G. RTC 09-286 Approve an On-call Contract for Construction Management and Support Services in Conjunction with Sunnyvale Works! Projects

(F0911-43)

<u>Staff Recommendation</u>: Award a six-month contract to CSG Consultants, Inc. in an amount not to exceed \$341.250.

#### Other Items

1.H. ORDINANCE No. 2905-09 Adoption of Ordinance No. 2905-09 Amending Certain Sections and/or Tables of Title 19 (Zoning) of the Sunnyvale Municipal Code to Make Minor Corrections or Modifications for Accuracy and/or Clarity; and Amending Certain Sections of Title 9 (Public Peace, Safety or Welfare), Title 10 (Vehicles and Traffic) and Title 19 (Zoning) of the Sunnyvale Municipal Code to Delete the Outdated Words "Design Permit"

Staff Recommendation: Approve the second reading of Ordinance No. 2905-09

#### STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

#### **PUBLIC COMMENTS**

Councilmember Howe requested to sponsor a study issue on the bid process dealing with incentives on behalf of Councilmember-Elect Jim Griffith. Councilmember Chu stated he will cosponsor the study issue.

Vice Mayor Moylan stated the Council recently gave the city manager more discretion to identify study issues which might not be needed. Vice Mayor Moylan suggested waiting to hear staff's presentation on the purchasing process prior to requesting a study issue. City Manager Luebbers stated staff will be addressing Council regarding the purchasing and bid process and at that time, should Council wish to pursue a study issue, staff could move forward.

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Fred Fowler, President of Lakewood Village Neighborhood Association, stated the tennis courts at Lakewood and Fairwood parks are to be used for one hour only; however, the courts are being used all day by groups who hold spots for their friends. The residents are frustrated by this and would like the Parks and Recreation staff to contact Fowler and let him know how to properly handle this issue. Mayor Spitaleri agreed and stated the city manager will notify David Lewis, Director of Community Services.

Susan Gevertz, resident of Lakewood Village, spoke about her concerns over residents who are using the public streets for storing vehicles. Gevertz stated that resident's are moving their vehicles every 24 hours or after getting ticketed. Gevertz stated this is an ongoing issue as there are not any repercussions and suggested the City institute monetary fines to vehicles that have been ticketed after so many times. Gevertz expressed concern over the waste of City staff time tagging these vehicles. City Manager Luebbers responded that the Neighborhood Preservation Office, which is part of Public Safety, will work on this issue.

Dan Hafeman spoke about issues with the sidewalk on Washington Ave between Mathilda and Murphy Street. Hafeman stated he raised the safety issues in this area several months ago; however, to date nothing has been done. The sidewalk is too narrow for opposing foot traffic, due to the surrounding area having a temporary fence, which has concrete blocks that stick out into the sidewalk. At night this area is a trip hazard because the overhang from the partially demolished building blocks the street lighting. Hafeman stated the earthquake safety of the structure is also of concern due to the demolition. Hafeman stated the developer agreed to put up a permanent fence if requested by the City. Hafeman requested staff respond to the question that if the sidewalk area does not meet City codes or any earthquake standards set by the City and State of California, then why doesn't staff enforce the standard? Hafeman stated this is an abandoned site and requested staff respond as to whether they have requested a permanent fence for the area, and if so, when it will be installed. Mayor Spitaleri requested the city manager respond to the resident and City Manager Luebbers stated he will respond to the questions regarding these issues in his weekly memo to Council and will also advise the resident.

#### PUBLIC HEARINGS/GENERAL BUSINESS

# 2. RESOLUTION Resolution Forming Wolfe Road Underground Utility District – RTC 09-282 Public Hearing

Director of Public Works Marvin Rose provided the staff report.

Vice Mayor Moylan verified with Director Rose that after this undergrounding occurs, the next two locations will in the Homestead Road area.

Public Hearing opened at 7:24 p.m.

No speakers.

Public hearing closed at 7:24 p.m.

Councilmember Hamilton informed Council that one written protest was received. Mayor Spitaleri verified with Director Rose that he was not aware of the protest; however, the protest must be read into the record by the city clerk.

City Clerk Kathleen Franco Simmons read the protest from Michael T. Novick, Reed Associates, LLC into the record.

Councilmember Hamilton stated for the record that the address on the protest letter from Reed Associates identifies the company is located in Van Nuys, California and it is unclear as to where in Sunnyvale they are a property owner.

MOTION: Councilmember Hamilton moved and Vice Mayor Moylan seconded to approve Alternative No. 1: Approve the resolution forming the Wolfe Road Underground Utility District.

**VOTE: 7-0** 

### 3. ORDINANCE 2009-0074 Limitations on Signage for Alcohol Sales (Study Issue) RTC 09-281

Director of Community Development Hanson Hom provided the staff report.

Councilmember Swegles inquired if signs near schools could be restricted and Director Hom stated the First Amendment rights would not easily allow restrictions to the content of commercial signs. Director Hom stated that state law allows cities to make specific regulations for service stations; however, for other types of uses the City would be compelled to make definitive findings which can be hard to prove.

Councilmember Chu inquired if the limitations being discussed would apply to service stations signs and Director Hom explained that staff adopted what is allowed under state law for regulations of service stations, which allows limitations on the square footage of window signs along with the type of signage that may be used over gas tanks related specifically to alcohol. Director Hom stated staff determined that liquor stores are a type of use that may have more alcohol signage as opposed to a restaurant or general merchandise type store. Currently, there is no definition for a liquor store; therefore, it might be useful to establish a definition for these stores as many cities do regulate this type of use as a more specific type of use category.

Councilmember Chu asked why staff is recommending a 200 foot radius rather than a 500 foot radius and what are other cities are using. Director Hom responded that staff felt a 500 foot radius was too large and 100 feet may be too narrow. Cities vary as to what they restrict anywhere from 100 to 500 feet and a lot has to do with the surrounding land use and the proximity to schools in the area.

Councilmember Whittum verified with Director Hom that that within the entire commercial zoning district, a liquor store is classified as a retail use, so it would be a permitted use without requirements for a use permit or miscellaneous plan permit. Restaurants that sell alcohol however, are required to have a miscellaneous plan permit

Public Hearing opened at 7:38 p.m.

No speakers.

Public hearing closed at 7:38 p.m.

MOTION: Councilmember Howe moved and Councilmember Whittum seconded to approve Alternatives 1, 2a and a modified 5:

Alternative 1: Introduce the attached ordinance (Attachment E) to amend Title 19 to create definitions for "liquor store" as off sale, display and storage of spirits or hard alcohol products, and "public school site" for properties owned by public school district that are currently, or could be used as a school;

Alternative 2a: Amend the Commercial Zoning District Tables to:

prohibit liquor stores in a C-1 Zone and located within 200 feet of a public school site, and Alternative 5: (not exactly as written) – Staff to return with further research and discussion of impacts to implement a further program to see how it would impact the business community.

Councilmember Hamilton requested Councilmember Howe clarify his intention for Alternative 5. Councilmember Howe explained that he is adding Alternative 5; however, not exactly as it is written; rather he is requesting that staff return after further research and discussion on the impacts to businesses of prohibiting liquor sales within 200 feet of a school. Councilmember Howe stated all that this would do is require staff to come back to Council with additional information.

Councilmember Howe stated the main reason he was part of implementing this study issue was because a liquor store is located on Maude Avenue, directly across from Bishop School, which has cartoon characters advertising alcohol. Councilmember Howe stated he felt this was an issue that needed to be addressed by the City and that was the intent of his study issue.

Vice Mayor Moylan acknowledged this item was one of the highest ranked study issues from last year; however, sometimes the results of a study issue can identify that there really is not a problem. Vice Mayor Moylan stated the staff report does not appear to identify any problems and no public comments were made at either at the Planning Commission meeting or during this Council meeting. Vice Mayor Moylan stated his concern is that Council is enacting a citywide ordinance when staff and the community are telling Council that there is not a problem and therefore, he will not be able to support the motion.

Councilmember Whittum stated there is more to this issue than signage, rather there is the issue of the environment that children are in within, such as public drunkenness in the area identified by Councilmember Howe for this study issue. Councilmember Whittum stated that it is Council's job to look out for the children of this community.

City Clerk Franco Simmons read the title of the ordinance into the record.

VOTE 6-1 (Vice Mayor Moylan dissented)

#### 4. ORDINANCE No. 2906-09

Adoption of Ordinance No. 2906-09 Amending Certain Sections of Chapters 19.20 (Commercial Zoning Districts), 19.22 (Industrial Zoning Districts), 19.24 (Office and Public Facilities Zoning Districts), 19.28 (Downtown Specific Plan), 19.29 (Moffett Park Specific Plan), 19.44 (Signs), 19.48 (Fences, Distances Between Buildings and Extensions Into Yards), 19.54 (Wireless Telecommunication Facilities), 19.88 (Use Permits), and 19.90 (Special Development Permits), of Title 19 (Zoning) of the Sunnyvale Municipal Code Relating to Streamlining Processes

City Attorney David Kahn provided the staff report and stated that items 4, 5, 6, 7 and 8 are ordinances placed on the agenda for second readings. They were not put on the Consent Calendar because during the last Council meeting, they did not receive a unanimous vote. City Attorney Kahn explained that for each ordinance, the procedure would be to make a motion and then read the ordinance number; however, a reading of the ordinance will not be required.

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve the second reading of Ordinance No. 2906-09

Councilmember Whittum stated a phrase needs to be added that any legal non-conforming fences may be maintained. One of the inconsistencies is that legal non-conforming fences are accepted; however, it is the nature of fences that they are maintained and this measure has pulled out that language out, which would allow a homeowner the ability to never maintain their fence. Councilmember Whittum suggested an amendment to the motion reflecting this addition to the ordinance.

Councilmember Whittum stated his other concern is the section in the staff report on page 13 changing the requirement for a major use to a minor use permit. Councilmember Whittum stated it is well known that these facilities are the subject of controversy and allowing a minor use permit does not resolve that problem. Councilmember Whittum stated he will oppose the motion.

VOTE: 6-1 (Councilmember Whittum dissented)

#### 5. ORDINANCE No. 2907-09

Adoption of Ordinance No. 2907-09 Amending Certain Sections of Chapters 19.12 (Definitions), 19.18 (Residential Zoning Districts), 19.28 (Downtown Specific Plan District), 19.34 (Front, Side And Rear Yards), 19.40 (Accessory Utility Buildings), 19.42 (Operating Standards), 19.48 (Fences, Distances Between Buildings and Extensions Into Yards), 19.68 (Mobile and Accessory Living Units), 19.82 (Miscellaneous Plan Permit), and 19.88 (Use Permits) of Title 19 (Zoning) of the Sunnyvale Municipal Code Pertaining to Accessory Structures—Sheds

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton seconded the motion to approve the second reading of Ordinance No. 2907-09.

Councilmember Whittum stated his concerns as to why anyone would oppose a play set located behind a permitted fence. Councilmember Whittum stated there is no harm in accepting an amendment to allow play set, which is screened behind a permitted fence. Councilmember Whittum stated he is curious in the reasoning behind that and he favors a use permit, rather than a prohibited permit.

VOTE: 6-1 (Councilmember Whittum dissented)

#### 6. ORDINANCE No. 2908-09

Adoption of Ordinance No. 2908-09 Amending Certain Sections of Chapters 19.12 (Definitions); 19.32 (Building Heights, Lot Coverages and Floor Area Ratios); 19.80 (Design Review); and 19.98 (General Procedures) of Title 19 (Zoning) of the Sunnyvale Municipal Code Pertaining to Single-Family Homes

MOTION: Vice Mayor Moylan moved and Councilmember Chu seconded the motion to approve the second reading of Ordinance No. 2908-09.

Councilmember Whittum stated he objects to this ordinance for reasons stated previously.

VOTE: 6-1 (Councilmember Whittum dissented)

#### 7. ORDINANCE No. 2909-09

Adoption of Ordinance No. 2909-09 Amending Certain Sections of Chapter 19.34 (Front, Side and Rear Yards) of Title 19 (Zoning) of the Sunnyvale Municipal Code Pertaining to Single-Family Homes

MOTION: Vice Mayor Moylan moved and Councilmember Hamilton seconded to approve the second reading of Ordinance No. 2909-09.

VOTE: 7-0

## 8. RTC 09-280 Council Nomination for Consideration of Appointment to VTA Board of Directors Representing Small Cities Group 2

Assistant City Manager Robert Walker provided the staff report.

Public hearing opened at 7:51 p.m.

No speakers.

Public hearing closed at 7:51 p.m.

NOMINATION: Councilmember Howe nominated Vice Mayor Moylan to the Santa Clara Valley Transportation Authority (VTA) Board of Directors representing City of Sunnyvale (small cities group 2) and Councilmember Chu seconded the nomination.

Vice Mayor Moylan accepted the nomination. Vice Mayor Moylan explained that on December 11, 2009, the six cities will vote and choose three board members and one alternate for the next two years.

Councilmember Howe stated Vice Mayor Moylan has worked on transportation issues extensively and would make an excellent board member on the VTA.

Councilmember Chu stated he supports Vice Mayor Moylan as a potential board member and identified his experience in transportation issues.

Councilmember Chu inquired as to when the other cities will announce who their nominees are because Council will need to place an item on the agenda regarding how Council will rank the nominees for the December 11, 2009 VTA meeting. Vice Mayor Moylan stated that Council does not need to tell him how to vote and instead could allow him full discretion based on his working relationship with the nominees. Vice Mayor Moylan identified that should Council wish to direct him as to whom to vote for, then this item will need to be placed back on the agenda. Vice Mayor Moylan requested Council allow him to vote on his own for the board members.

Councilmember Howe asked if a motion would be in order to allow Vice Mayor Moylan the ability to vote without further direction. City Attorney Kahn stated Vice Mayor Moylan would have discretion to vote on his own without any further Council action needed. Should Council wish to direct otherwise, then a motion would be needed.

VOTE: 7-0

MOTION: Councilmember Chu moved and Councilmember Whittum seconded that Council be informed as to who the other nominated candidates are and provide input to the process.

Councilmember Chu stated it is his understanding that Council recently created a policy that the selection of candidates would be decided by the Council and he would like to follow through with that process.

VOTE: 2-5 (Councilmember Swegles, Vice Mayor Moylan, Mayor Spitaleri, Councilmembers Howe and Hamilton dissented)

#### MOTION FAILED

MOTION: Councilmember Whittum moved and Councilmember Chu seconded to have a study session on this item with input as to who the nominees are prior to the December 11, 2009 VTA meeting.

Councilmember Chu stated it is important that the entire Council understand what is happening in the appointment process and it is extremely unusual to have anyone other than the mayor make appointments or recommendations. Councilmember Chu stated Council policy was created recently and it should be used in this instance in order to have the entire Council vote on who would represent Sunnyvale on the VTA.

Councilmember Whittum stated Council has already voted and expressed that Vice Mayor Moylan is to make his own choice; however, it would be helpful to hold a study session simply to fill Council in on what is going on at the VTA. The matter of direction for voting was already decided.

Mayor Spitaleri stated he will support the motion because it only requires Vice Mayor Moylan to report back to Council as to what is going on at the VTA.

City Manager Luebbers stated if Council is looking to receive a report back from Vice Mayor Moylan on the VTA proceedings, then an agenda item to report the outcome of a meeting would be more in order than a study session. Mayor Spitaleri stated that report could also be given by Vice Mayor Moylan as part of the Councilmember reports on activities from the Intergovernmental Committee Assignments reports (IGR) which are given at the end of Council meetings. Vice Mayor Moylan agreed that he would give a report during the IGR portion of a Council meeting prior December 11, 2009.

Councilmember Whittum withdrew his motion.

### 9. COUNCIL Recognition of the City's Candidate Forum Moderator Sharon DISCUSSION Kreider

Councilmember Howe explained that the Council Ethics Sub-Committee for the election selected moderator, Sharon Kreider for two debates, which were televised. Sharon Kreider donated her time for these debates and Councilmember Howe suggested the Mayor take flowers and a card to Kreider as a thank you on behalf of the Council for her services.

Public hearing opened at 8:04 p.m.

No speakers

Public hearing closed at 8:04 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion for the Mayor, Vice Mayor and the Councilmembers that choose to sign a certificate to thank Sharon Kreider for her service as the City's Candidate Forum Moderator, to approve expenditure of a nominal amount of money for flowers, and to direct the Mayor to deliver the flowers to the moderator with the certificate of appreciation.

**VOTE: 7-0** 

## <u>COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE</u> ASSIGNMENTS

Councilmember Hamilton announced two appointments were made during the Santa Clara Cities Association Meeting. Councilmember Hamilton stated an alternate is still needed for the Local Agency Formation Commission of Santa Clara County (LAFCO) board and requested that should any Councilmember be interested in this position, please let her know prior to the first week of January 2010.

Vice Mayor Moylan reported the VTA board voted to initiate the procedure for the reorganization of city groupings in order to double the representation of the two south county cities at Sunnyvale's expense. The vote was 9-2 with Vice Mayor Moylan and City of Palo Alto voting against it. Vice Mayor Moylan stated the next step will be to sign a Joint Powers Agreement and as soon as a majority of the cities agree, and assuming it is not challenged in court, then the reorganization will occur. Should that happen, then Sunnyvale will be part of a three city grouping

with City of Santa Clara and City of Milpitas. A three city grouping is problematic when two cities vote the same way, then the third city does not have a chance regardless of their population base. Vice Mayor Moylan stated if this regrouping is successful, that will be bad news for the City of Sunnyvale.

Councilmember Swegles stated he serves on the State Water Board Task Force and they have submitted their suggestions to the state in final draft and will be ready for voting in the very near future.

Councilmember Swegles stated he attended a Base Realignment and Closure (BRAC) meeting regarding the closure of Onizuka Air Force Base and the City of Sunnyvale's proposal has been delayed due to number of employees working on base closures. Councilmember Swegles stated he requested the City's proposal be reviewed in a timely manner.

Councilmember Swegles announced staff will be filling in for him at the upcoming Bay Area Water Supply and Conservation Agency (BASCWA) meeting. Councilmember Swegles explained he will be attending a state meeting as the President of the League of California Cities Peninsula Division in Los Angeles, and therefore cannot make the BASCWA meeting.

Councilmember Whittum suggested Council should place the VTA item regarding reorganization of the city groupings on a closed session agenda.

Mayor Spitaleri reported that during the annual business meeting at the National League of Cities, he attended the public safety and crime prevention policy and resolutions committee meeting. Mayor Spitaleri announced the items the committee voted to support.

#### **PUBLIC COMMENTS (reopened)**

Mayor Spitaleri stated a public comment card was received late for Consent Calendar Item I.H.; however, he will allow the speaker, Brett Flesner to comment on Item 1.H. Mayor Spitaleri explained that Council already took action on this item.

Flesner stated his concerns over removed wording from the municipal code. Flesner made suggestions to add some protections for the homeowner to the code. Vice Mayor Moylan verified with Director Hom that when the code is changed, all non-conforming uses are grandfathered in and the code is not retroactive to preexisting conditions. Flesner stated he understands the process but is requesting protection be placed into the code for the homeowner and further explained his position.

Arthur Schwartz presented an update on the Moffett Field committee meeting. Schwartz stated the Navy and NASA continue to disagree as to who will pay to re-skin the hangar. Schwartz stated they have received assurances from the Secretary of the Navy that nothing will move forward on removing the skin at the hangar until an agreement is reached on re-skinning the hangar. The committee is hopeful that the Navy will continue to support this position because the committee wants the hangar restored to its original state.

#### **NON-AGENDA ITEMS & COMMENTS**

**COUNCIL:** Councilmember Howe spoke about the Target Grand Opening and noted that

the City received a letter from Target thanking the City and staff.

Councilmember Howe requested the city manager thank the appropriate City

staff on behalf of Council for their work with Target.

STAFF: City Manager Luebbers stated that staff is compiling the agenda calendar for

next year and requested Council notify him should they have any scheduling

conflicts.

#### **INFORMATION ONLY REPORTS/ITEMS**

• Tentative Council Meeting Agenda Calendar

- Draft Minutes of the Parks & Recreation Commission Meeting of October 14, 2009
- Draft Minutes of the Arts Commission Meeting of October 21, 2009
- Draft Minutes of the Board of Library Trustees Meeting of November 2, 2009.
- Draft Tentative Council Meeting Agenda Calendar (TCMAC) for 2010

#### **ADJOURNMENT**

Councilmember Chu requested the Mayor close the meeting in memory of two individuals. Councilmember Chu stated his neighbor, Lee Thompson, was a life-long resident of Sunnyvale who passed away last week with complications from prostate cancer and is survived by his wife and daughter. Councilmember Chu stated he would also like to adjourn the meeting in memory of Assembly Member Paul Fong's father who also recently passed away. Assembly Member Fong's father had been a flower farmer in Sunnyvale for a number of years.

Mayor Spitaleri called for a moment of silence.	
Mayor Spitaleri adjourned the Council Meeting at 8:25 p.m.	
Kathleen Franco Simmons City Clerk	Date

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